

Leon

BEFORE THE ARIZONA CORPORATION COMMISSION

Arizona Corporation Commission

DOCKETED

RECEIVED

JUN 21 2005

JUN 22 2005

COMMISSIONERS

JEFF HATCH-MILLER, Chairman
WILLIAM A. MUNDELL
MARC SPITZER
MIKE GLEASON
KRISTIN K. MAYES

DOCKETED BY

AZ Corporation Commission
Director Of Utilities

IN THE MATTER OF THE APPLICATION OF
ANDIAMO TELECOM, LLC FOR A
CERTIFICATE OF CONVENIENCE AND
NECESSITY TO PROVIDE COMPETITIVE
RESOLD LOCAL EXCHANGE AND
INTEREXCHANGE SERVICES IN ARIZONA.¹

DOCKET NO. T-04267A-04-0534

DECISION NO. 67948

OPINION AND ORDER

DATE OF HEARING: April 25, 2005

PLACE OF HEARING: Phoenix, Arizona

ADMINISTRATIVE LAW JUDGE: Amanda Pope

APPEARANCES: Jack Kelley, Chief Operating Officer, on behalf of
Andiamo Telecom, LLC.

David Ronald, Staff Attorney, Legal Division, on behalf
of the Utilities Division of the Arizona Corporation
Commission.

BY THE COMMISSION:

Having considered the entire record herein and being fully advised in the premises, the
Arizona Corporation Commission ("Commission") finds, concludes, and orders that:

FINDINGS OF FACT

1. On July 1, 2004, Andiamo Telecom, LLC ("Andiamo" or "Applicant") filed with the
Commission an application for a Certificate of Convenience and Necessity ("Certificate") to provide
resold local exchange and interexchange and facilities-based local exchange telecommunications
services within the State of Arizona. The application petitioned the Commission for determination
that its proposed services should be classified as competitive.

2. On January 7, 2005, the Commission's Utilities Division Staff ("Staff") filed its Staff

¹ At the April 25, 2005 hearing, Andiamo modified its July 1, 2004 application by deleting its application to provide
facilities-based local exchange services.

1 Report, which recommended approval of the application and included a number of additional
2 recommendations.

3 3. On March 1, 2005, a Procedural Order was issued setting this matter for hearing on
4 April 25, 2005 and setting various procedural deadlines.

5 4. On March 25, 2005, Applicant docketed an Affidavit of Publication that complies with
6 Commission rules.

7 5. On April 25, 2005, a full public hearing in this matter was held as scheduled. Jack
8 Kelley, Andiamo's Chief Operating Officer, appeared on behalf of Applicant. Staff appeared and
9 was represented by counsel. The hearing was conducted before a duly authorized Administrative
10 Law Judge. Evidence was presented and testimony was taken. At the conclusion of the hearing, the
11 Administrative Law Judge took the matter under advisement and informed the parties that a
12 Recommended Opinion and Order would be prepared for the Commissioners' consideration.

13 6. At the hearing, Andiamo indicated that it was amending its application by
14 withdrawing its request for authority to provide facilities-based local exchange service.

15 7. As a consequence, Staff testified that it recommends modifying its recommendation
16 with regard to the procurement of a performance bond such that Andiamo should be required to
17 obtain a performance bond in the amount of \$25,000.

18 8. Andiamo is a domestic limited liability company organized under the laws of the State
19 of Arizona and authorized to do business in Arizona

20 9. Applicant has the technical capability to provide the services that are proposed in its
21 application.

22 10. Currently there are several incumbent providers of local exchange and interexchange
23 services in the service territory requested by Applicant, and numerous other entities have been
24 authorized to provide competitive local and interexchange services in all or portions of that territory.

25 11. It is appropriate to classify all of Applicant's authorized services as competitive.

26 12. The Staff Report stated that Applicant has no market power and the reasonableness of
27 its rates would be evaluated in a market with numerous competitors.

28 13. According to Staff, Andiamo submitted its unaudited financial statements for the three

1 month period ending March 31, 2004. These financial statements list assets of \$4,071,930, equity of
2 \$195,441, and net income of \$3,766.

3 14. In its Staff Report, Staff stated that based on information obtained from the Applicant,
4 it has determined that Andiamo's fair value rate base ("FVRB") is zero, is not useful in a fair value
5 analysis, and is not useful in setting rates. Staff further stated that in general, rates for competitive
6 services are not set according to rate of return regulation. Staff has reviewed the rates to be charged
7 by the Applicant and believes they are just and reasonable as they are comparable to other
8 competitive local carriers, local incumbent carriers, several interexchange carriers operating in
9 Arizona, and the resold long distance rates the Applicant charges in other jurisdictions. Therefore,
10 while Staff considered the FVRB information submitted by the Applicant, that information should
11 not be given substantial weight in this analysis.

12 15. Staff believes that Andiamo has no market power and that the reasonableness of its
13 rates will be evaluated in a market with numerous competitors. In light of the competitive market in
14 which the Applicant will be providing its services, Staff believes that the rates in Applicant's
15 proposed tariffs for its competitive services will be just and reasonable and recommends that the
16 Commission approve them.

17 16. The Application states that Andiamo does not collect advances and deposits from its
18 customers.

19 17. Staff recommends that Andiamo's application for a Certificate to provide competitive
20 facilities-based local exchange and resold local exchange and interexchange telecommunications
21 services be granted subject to the following conditions:

22 (a) that, unless it provides services solely through the use of its own facilities,
23 Andiamo be ordered to procure an Interconnection Agreement before being
24 allowed to offer local exchange service. The Interconnection Agreement
25 should be procured within 365 days of the effective date of the Order in this
26 matter or 30 days prior to the provision of service, whichever comes first, and
27 must remain in effect until further order of the Commission. If Andiamo
28 provides services solely through the use of its own facilities, no other
information shall be required once the Applicant docket evidence of that fact
with the Commission's Docket Control Center pursuant to the timeframes set
forth above;

(b) that Andiamo be ordered to file with the Commission's Docket Control Center,
within 365 days of the effective date of the Order in this matter or 30 days

1 prior to the provision of service, whichever comes first, its plan to have its
2 customers' telephone numbers included in the incumbent's Directories and
Directory Assistance databases;

3 (c) that Andiamo be ordered to pursue permanent number portability arrangements
with other LECs pursuant to Commission rules, federal laws and federal rules;

4 (d) that Andiamo be ordered to abide by and participate in the AUSF mechanism
5 instituted in Decision No. 59623, dated April 24, 1996 (Docket No. RT-
00000E-95-0498);

6 (e) that Andiamo be ordered to abide by the quality of service standards that were
7 approved by the Commission for Qwest in Docket No. T-0151B-93-0183;

8 (f) that Andiamo be prohibited from barring access to alternative local exchange
9 service providers who wish to serve areas where Andiamo is the only provider
of local exchange service facilities;

10 (g) that Andiamo be ordered to abide by all the Commission decisions and policies
regarding CLASS services;

11 (h) that Andiamo be ordered to provide 2-PIC equal access;

12 (i) that Andiamo be required to notify the Commission immediately upon changes
13 to its name, address or telephone number;

14 (j) that Andiamo be ordered to comply with all Commission rules, orders, and
15 other requirements relevant to the provision of intrastate telecommunications
service;

16 (k) that Andiamo be ordered to maintain its accounts and records as required by
the Commission;

17 (l) that Andiamo be ordered to file with the Commission all financial and other
18 reports that the Commission may require, and in a form and at such times as
the Commission may designate;

19 (m) that Andiamo be ordered to maintain on file with the Commission all current
20 tariffs and rates, and any service standards that the Commission may require;

21 (n) that Andiamo be ordered to cooperate with Commission investigations
including, but not limited to, customer complaints;

22 (o) that Andiamo be ordered to participate in and contribute to a universal service
23 fund, as required by the Commission;

24 (p) that Andiamo be required to certify, through the 911 service provider in the
25 areas in which it intends to provide service, that all issues associated with the
provision of 911 service have been resolved with the emergency service
26 providers, within 365 days of the effective date of the Order in this matter or
31 days prior to the provision of service, whichever comes first, and must
27 remain in effect until further Order of the Commission;

28 (q) that Andiamo should be ordered to file an application with the Commission
pursuant to A.A.C. R14-2-1107, if the Applicant desires to discontinue service.
The Applicant should be required to notify each of its customers and the

Commission 60 days prior to filing an application to discontinue service; and any failure to do so should result in forfeiture of the Applicant's performance bond; and

- (r) that Andiamo be subject to the Commission's rules and the 1996 Telecommunications Act to the extent that they apply to CLECs.

18. Staff further recommended that Andiamo's application for a CC&N to provide intrastate telecommunications services should be granted subject to the following conditions, as amended at hearing:

- (a) Andiamo be ordered to file conforming tariffs within 365 days from the date of an Order in this matter or 30 days prior to providing service, whichever occurs first, and in accordance with the Decision;

- (b) In order to protect Andiamo's customers:

(1) Andiamo should be ordered to procure a performance bond equal to \$25,000. The minimum bond amount of \$25,000 should be increased if at any time it would be insufficient to cover advances, deposits and/or prepayments collected from the Applicant's customers. The bond amount should be increased in increments of \$12,500. This increase should occur when the total amount of the advances, deposits and prepayments is within \$2,500 of the bond amount;

(2) Andiamo should docket proof of the performance bond within 365 days of the effective date of an Order in this matter or 30 days prior to the provision of service, whichever comes first, and must remain in effect until further Order of the Commission; and

(3) if, at some time in the future, Andiamo wants to collect from its resold interexchange customers an advance, deposit and/or prepayments, Staff recommends that Andiamo be required to file an application with the Commission for approval. Such application must reference the decision in this docket and must explain the applicant's plans for procuring a performance bond.

- (c) If any of the above timeframes are not met, that Andiamo's CC&N should become null and void without further Order of the Commission and no extensions for compliance should be granted.

19. Staff's recommendations, as set forth herein, are reasonable.

20. Andiamo's FVRB is determined to be zero for purposes of this proceeding.

CONCLUSIONS OF LAW

1
2 1. Applicant is a public service corporation within the meaning of Article XV of the
3 Arizona Constitution and A.R.S. §§ 40-281 and 40-282.

4 2. The Commission has jurisdiction over Applicant and the subject matter of the
5 application.

6 3. Notice of the application was given in accordance with the law.

7 4. A.R.S. § 40-282 allows a telecommunications company to file an application for a
8 Certificate to provide competitive telecommunications services.

9 5. Pursuant to Article XV of the Arizona Constitution, as well as the Arizona Revised
10 Statutes, it is in the public interest for Applicant to provide the telecommunications services set forth
11 in its application.

12 6. Applicant is a fit and proper entity to receive a Certificate authorizing it to provide
13 competitive resold local exchange and interexchange telecommunications services in Arizona as
14 conditioned by Staff's recommendations.

15 7. The telecommunications services that the Applicant intends to provide are competitive
16 within Arizona.

17 8. Pursuant to Article XV of the Arizona Constitution as well as the Competitive Rules,
18 it is just and reasonable and in the public interest for Applicant to establish rates and charges that are
19 not less than the Applicant's total service long-run incremental costs of providing the competitive
20 services approved herein.

21 9. Staff's recommendations, as set forth herein, are reasonable and should be adopted.

22 10. Andiamo's competitive rates, as set forth in its proposed tariffs, are just and
23 reasonable and should be approved.

ORDER

24
25 IT IS THEREFORE ORDERED that the application of Andiamo Telecom, LLC for a
26 Certificate of Convenience and Necessity for authority to provide competitive resold local exchange
27 and interexchange telecommunications services in Arizona shall be, and is hereby, granted,
28

1 conditioned upon Andiamo Telecom, LLC's timely compliance with the following three Ordering
2 Paragraphs.

3 IT IS FURTHER ORDERED that Andiamo Telecom, LLC shall file conforming tariffs in
4 accordance with this Decision within 365 days of this Decision or 30 days prior to providing service,
5 whichever comes first.

6 IT IS FURTHER ORDERED that Andiamo Telecom, LLC shall procure a performance bond
7 equal to \$25,000 the earlier of 365 days from the effective date of this Order or 30 days prior to the
8 commencement of service.

9 IT IS FURTHER ORDERED that Andiamo Telecom, LLC shall comply with all of the Staff
10 recommendations set forth in the above-stated Findings of Fact and Conclusions of Law.

11 IT IS FURTHER ORDERED that if Andiamo Telecom, LLC fails to meet the timeframes
12 outlined in the Ordering Paragraphs above, that the Certificate of Convenience and Necessity
13 conditionally granted herein shall become null and void without further Order of the Commission.

14 ...

15 ...

16 ...

17 ...

18 ...

19 ...

20 ...

21 ...

22 ...

23 ...

24 ...

25 ...

26 ...

27 ...

28 ...

IT IS FURTHER ORDERED that if Andiamo Telecom, LLC fails to notify each of its customers and the Commission at least 60 days prior to filing an application to discontinue service pursuant to A.A.C. R14-2-1107, that in addition to voidance of its Certificate of Convenience and Necessity, Now Acquisition Corporation's performance bond shall be forfeited.

IT IS FURTHER ORDERED that this Decision shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.



CHAIRMAN

COMMISSIONER

COMMISSIONER




COMMISSIONER



COMMISSIONER

IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive Secretary of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this 21st day of June, 2005.



BRIAN C. McNEIL
EXECUTIVE SECRETARY

DISSENT _____

DISSENT _____

AP:mlj

1 SERVICE LIST FOR: ANDIAMO TELECOM, LLC

2 DOCKET NO.: T-04267A-04-0534

3 Jack Kelley
4 Andiamo Telecom, LLC
5 10575 N. 114th Street, Suite 103
6 Scottsdale, Arizona 85259

7 Sharon Thomas
8 Technologies Management, Inc.
9 210 North Park Avenue
10 Winter Park, Florida 32789

11 Christopher Kempley, Chief Counsel
12 Legal Division
13 ARIZONA CORPORATION COMMISSION
14 1200 West Washington Street
15 Phoenix, Arizona 85007

16 Ernest Johnson, Director
17 Utilities Division
18 ARIZONA CORPORATION COMMISSION
19 1200 West Washington Street
20 Phoenix, Arizona 85007

